



BEFORE THE ARIZONA CORPORATION C

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

MAR 22 2007

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF  
LEVEL 3 COMMUNICATIONS LLC FOR A  
LIMITED WAIVER OF THE PUBLIC UTILITY  
HOLDING COMPANIES AND AFFILIATED  
INTEREST RULES (A.A.C. R14-2-801 et. seq.)  
AND ENCUMBRANCE OF ASSETS.

DOCKET NO. T-03654A-06-0689

DECISION NO. 69376

ORDER

Open Meeting  
March 13 and 14, 2007  
Phoenix, Arizona

**BY THE COMMISSION:**

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. Level 3 Communications, LLC ("Level 3" or "Company"), a Delaware Limited Liability Company, is a wholly owned subsidiary of Level 3 Financing, Inc. ("Level 3 Financing"), which in turn is wholly owned by Level 3 Communications, Inc. All of the entities are headquartered in Broomfield, Colorado.

2. Level 3 provides voice and data services to approximately 200 customers in Arizona. Its customers are primarily other carriers, VoIP providers and Internet Service Providers ("ISPs"). The Commission authorized Level 3 to provide facilities-based and resold local exchange, toll and access services in Decision No. 61737 (June 4, 1999).

3. On October 25, 2006, Level 3 filed an application with the Commission requesting a limited waiver of the Commission's Public Utility Holding Companies and Affiliated Interests Rules ("Rules"), or in the alternative, authorization to act as guarantor to financings not to exceed \$1.5 billion entered into by its parent company, and to encumber any of its assets that may be necessary to

1 secure the financing pursuant to A.R.S. § 40-285.

2 4. Level 3 published notice of its application in the *Arizona Republic* on November 30,  
3 2006.

4 5. On December 19, 2006, Level 3 filed a Supplement to Application.

5 6. On January 30, 2007, the Commission's Utilities Division Staff ("Staff") filed a Staff  
6 Report recommending conditional approval of the application.

7 7. Based upon its operational revenues, Level 3 is a Class A Utility, and is subject to the  
8 Commission's Rules that regulate certain transactions and activities between public service  
9 corporations and their affiliated interests.

10 8. Level 3 Financing will issue approximately \$1.5 billion in notes with similar terms  
11 and conditions to qualified institutional buyers in a series of offerings that are exempt from  
12 registration under U.S. Federal securities laws. The first proposed offering consists of \$600 million  
13 9.25 percent fixed rate senior notes due in 2014. In its December 19, 2006 Supplement, Level 3  
14 indicated that the second offering will consist of \$650 million fixed rate senior notes. The funds will  
15 be used for general corporate purposes, including debt reduction and potential acquisition activity.

16 9. Level 3 requests authorization to guarantee up to \$1.5 billion in notes issued by Level  
17 3 Financing.

18 10. Level 3 states in its application that participating in the financing arrangements as a  
19 guarantor will not result in a change in its management or in its day-to-day operations in Arizona; nor  
20 would it adversely affect Applicant's current or proposed operations in Arizona. Level 3 further  
21 states that the financing arrangements will enable it to bring services to new markets and allow more  
22 consumers to benefit from its competitive services more quickly and efficiently.

23 11. Level 3 states that the proposed transaction will not directly or indirectly result in or  
24 cause an increase in its maximum rates on file with the Commission for any competitive service.  
25 Level 3 asserts that because it provides competitive wholesale services it has no incentive or ability to  
26 charge above-market prices that could be used to fund or subsidize unregulated affiliates or to  
27 commingle utility and non-utility funds in a manner that is harmful to Arizona consumers.

28 12. Level 3 also states that approval of the application is in the public interest because it

1 will promote competition by providing Level 3 the opportunity to strengthen its competitive position  
2 through access to greater financial resources.

3 13. In its financial analysis, Staff states that the request for a limited waiver of the Rules  
4 does not sufficiently mitigate the potential harm to ratepayers in Arizona, and recommends that the  
5 public interest is better served by conditionally authorizing Level 3 to guarantee, and to the extent  
6 necessary, to encumber its Arizona assets as security for the proposed debt financing.

7 14. The Staff Report states that Staff concludes that the proposed pledge of Arizona assets  
8 would not impair the financial status of the Company, would not impair its ability to attract capital at  
9 fair and reasonable terms, nor would it impair the ability of the Company to provide safe, reliable,  
10 and adequate service. Staff believes that customers may have exposure to losses to the extent that  
11 they have prepaid for service or made deposits.

12 15. Staff states that A.R.S. § 40-285 serves to protect captive customers from a utility's  
13 act to dispose of any of its assets that are necessary for the provision of service, and prevent any  
14 service impairment due to disposal of assets essential for providing service.

15 16. Staff stated that Applicants provide competitive services and that their customers have  
16 alternative service providers, but that customers may still have exposure to losses to the extent they  
17 have prepaid for service or made deposits. Therefore, Staff recommended that any authorization for  
18 encumbrances should provide customer protection for prepayments and deposits.

19 17. According to the Staff Report, the Corporations Division reports that Level 3 is in  
20 good standing, and Staff's search of Consumer Services database indicates that Level 3 had no  
21 complaints, inquiries, or opinions from January 1, 2003 to December 16, 2006.

22 18. Staff recommends:

23 (a) approval of Level 3's alternative request for authority to guarantee loans and  
24 pledge its assets as security for the notes in an amount up to approximately \$1.5 billion, subject to the  
25 condition that all customer deposits and prepayments be excluded from encumbrance, or in the  
26 alternative, be secured by a bond or irrevocable sight draft letter of credit which is not included in the  
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pledged collateral<sup>1</sup>;

(b) that if Level 3 exercises the option of procuring a performance bond to protect Arizona customer deposits and prepayments, that it files proof of the performance bond in Docket Control, within 60 days of the effective date of the decision in this proceeding; and

(c) that Level 3 should be authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

19. The Applicants should file copies of the executed transaction and security documents pertaining to the authorization granted herein, with Docket Control, as a compliance item in this docket, within 60 days of each transaction.

20. Level 3 did not file any objections to the Staff Report.

21. Staff's recommendations are reasonable and we will adopt them.

### **CONCLUSIONS OF LAW**

1. Level 3 is a public service corporation within the meaning of Article XV of the Arizona Constitution, A.R.S. § 40-285, and A.A.C. R14-2-804.

2. The Commission has jurisdiction over Level 3 and the subject matter of the application.

3. The requested limited waiver of the Public Utility Holding Companies and Affiliated Interests Rules is not in the public interest.

4. Authorization of Level 3's guarantee in support of its parent's debt issuance is compatible with the public interest.

5. Staff's recommendations in Findings of Fact No. 18 are reasonable and should be adopted.

### **ORDER**

IT IS THEREFORE ORDERED that pursuant to A.R.S. § 40-285, and A.A.C. R14-2-804, Level 3 Communications, LLC's application for approval to guarantee the debt of Level 3 Financing, Inc. as set forth in the October 25, 2006 Application and the December 19, 2006 Supplement to the

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<sup>1</sup> The Staff Report does not indicate whether Level 3 currently has a performance bond in place.

1 Application, is hereby approved, subject to the condition that all Arizona customer deposits and  
2 prepayments be excluded from encumbrance, or in the alternative, be secured by a bond or  
3 irrevocable sight draft letter of credit which is not included in the pledged collateral.

4 IT IS FURTHER ORDERED that Level 3 Communications, LLC shall file with Docket  
5 Control, as a compliance item in this docket, an attested statement of whether all Arizona customer  
6 deposits and prepayments are excluded from encumbrance or whether they are secured by a  
7 performance bond or irrevocable sight draft letter of credit which is not included in the pledged  
8 collateral, within 60 days of this Decision.

9 IT IS FURTHER ORDERED that in the event that Level 3 Communications, LLC obtains a  
10 performance bond or irrevocable sight draft letter of credit in compliance with this Decision, Level 3  
11 Communications, LLC shall provide the original bond or letter to the Commission's Business Office  
12 and copies to Docket Control, as a compliance item in this docket, within 60 days of this Decision.

13 IT IS FURTHER ORDERED that Level 3 Communications, LLC is hereby authorized to  
14 grant liens and engage in any transactions and/or execute any documents necessary to effectuate the  
15 authorization as granted herein.

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IT IS FURTHER ORDERED that Level 3 Communications, LLC shall file the executed transaction and security documents with Docket Control, as a compliance item in this docket, within 60 days of each transaction.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

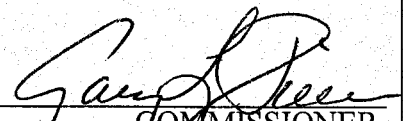
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 22<sup>nd</sup> day of March, 2007.

  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR:

LEVEL 3 COMMUNICATIONS, LLC

2 DOCKET NO.:

T-03654A-06-0689

3 Thomas H. Campbell

4 Michael T. Hallam

LEWIS AND ROCA

5 40 North Central Avenue

Phoenix, AZ 85004

6 Catherine Wang

7 Danielle C. Burt

8 Jeffrey Strenkowski

BRINGHAM MCCUTCHEN, LLC

9 3000 K Street, NW, Suite 300

Washington, DC 20007

10 William P. Hunt

11 LEVEL 3 COMMUNICATIONS, LLC

12 1025 Eldorado Blvd.

Broomfield, CO 80021

13 Christopher Kempley, Chief Counsel

14 Legal Division

ARIZONA CORPORATION COMMISSION

15 1200 West Washington Street

Phoenix, AZ 85007

16 Ernest G. Johnson, Director

17 Utilities Division

ARIZONA CORPORATION COMMISSION

18 1200 West Washington Street

Phoenix, AZ 85007